

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICKY S. WAHCHUMWAH (1) and  
VICTORIA M. JIM (2),

Defendants.

No. CR-09-2035-EFS-1

No. CR-09-2035-EFS-2

**ORDER VACATING COUNT 5 AS TO BOTH  
DEFENDANTS, VACATING COUNT 3 AS TO  
DEFENDANT WAHCHUMWAH, AND  
DIRECTING THE ENTRY OF AMENDED  
JUDGMENTS**

A hearing occurred in the above-captioned matter on July 10, 2013. Tim Ohms appeared on the U.S. Attorney's Office's behalf. Defendant Ricky Wahchumwah was present, represented by Karen Lindholdt<sup>1</sup>; Defendant Victoria Jim was present, represented by Philip Nino. At the hearing, the Court determined which multiplicitous counts to vacate following the Ninth Circuit's mandate. ECF No. 474. On appeal, the Ninth Circuit determined that, as to Defendant Wahchumwah, Counts 2 and 3, and Counts 4 and 5 are multiplicitous, and that as to Defendant Jim, Counts 4 and 5 are multiplicitous.

After considering the parties' respective positions as to which multiplicitous counts to vacate, the Court adopts the Defendants' position. See *United States v. Maier*, 646 F.3d 1148, 1155 (9th Cir.

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<sup>1</sup> Defendant Wahchumwah's trial counsel, John Moore, was also present.

2011) (recognizing that the discretion as to which count to vacate rests with the court after considering the totality of the circumstances). Accordingly, **IT IS HEREBY ORDERED:**

1. The USAO's Motion to Vacate Convictions on Specified Counts of Superseding Indictment, **ECF No. 484**, is **GRANTED IN PART** (multiplicitous counts are vacated) **and DENIED IN PART** (the counts are vacated as proposed by Defendants).

2. As to Defendant Wahchumwah, Counts 3 and 5 are **VACATED**. The previously-imposed \$100.00 special penalty assessment as to each of these Counts is **VACATED** and returned as appropriate.

3. As to Defendant Jim, Count 5 is **VACATED**. The previously-imposed \$100.00 special penalty assessment as to Count 5 is **VACATED** and returned as appropriate.

4. The Judgments shall be amended accordingly.

**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and provide copies to counsel and the U.S. Probation Office.

**DATED** this 24th day of July 2013.

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s/Edward F. Shea  
EDWARD F. SHEA  
Senior United States District Judge